UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/30/Add.2
30 July 1991

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third session
Item 11 of the provisional agenda

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Report on the independence of the judiciary and the protection of practising lawyers, prepared by Mr. Louis Joinet, in accordance with resolution 1990/23 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

Addendum

Note by the Special Rapporteur

I have received from the Government of Sri Lanka information on cases of measures and practices concerning the independence of the judiciary and the protection of practising lawyers dealt with in the report. The cases of measures and practices concerning the independence of the judiciary and the protection of practising lawyers in that country are dealt with in paragraph 228 of the report (E/CN.4/Sub.2/1991/30). The communication received from the Government of Sri Lanka is reproduced below in extenso.

SRI LANKA

[15 July 1991]

1. The Government of Sri Lanka has condemned the unfortunate killings of lawyers referred to in the communication dated 13 June 1991 received from the Special Rapporteur. Magisterial inquests have been held into these cases, and while some investigations are still continuing others have been concluded. (Details regarding these cases have been provided to the Special Rapporteur Mr. A. Wako in previous replies of the Government of Sri Lanka.) Action has also been taken to provide security for those lawyers who have requested it. Some lawyers had availed themselves of this facility. There have not been any recent cases of such reported killings or threats to lawyers. However, the Government of Sri Lanka reiterates that such illegal killings have not hampered the work of the judiciary or the legal profession concerning the filing of fundamental rights cases.

2. The killings of lawyers and death threats received by others referred to in the above-mentioned communication from the Special Rapporteur, took place in the context of the violence and intimidation created by the terrorist groups, the Janatha Vimukthi Peramuna (JVP) and the Liberation Tigers of Tamil Eelam (LTTE). Both these groups are known for their acts of intimidation and terror, not only against innocent civilians, but also in the elimination of former members of their own parties and their political rivals.

3. In the case of LTTE, it is well known that they have systematically engaged in the elimination of their political rivals, especially the members of democratic Tamil political parties, as in the incidents of the murder of the lawyer, Mr. Sam Tambimuttu, mentioned in the report of the Special Rapporteur, and also of Mr. A. Amirthalingam. At the time of his death, Mr. Amirthalingam was the President of the Tamil United Liberation Front (TULF) and Mr. Yogeswaran (also killed in the incident) a member of the Politburo. Investigations have disclosed that the assassinations were carried out as part of the strategy of LTTE to destroy all other political parties representing the Tamil-speaking people. One accused person has been indicted in the High Court of Colombo for conspiracy to murder Mr. Amirthalingam. The suspect had been a member of LTTE and had been acting under the direction of LTTE. The three assassins have been identified as members of LTTE who had been sent to Colombo for the purpose of the murder.

4. In the case of lawyer Sam Tambimuttu, at the time of his death he was a Member of Parliament representing the Elam People's Revolutionary Liberation Front (EPRLF), which is politically opposed to LTTE. Shortly prior to his death he is known to have been critical of human rights violations by LTTE. Investigations have indicated that an LTTE member was involved in the assassination.

5. In cases where the security forces have been allegedly involved they have been held accountable under the law, equal to all other citizens. In the case of lawyer Wijedasa Liyanarachchi (referred to in the report of the Special Rapporteur), investigations were conducted and the suspected police officers were detained. The Attorney General filed an indictment against the

three police officers for conspiracy to murder, and the murder of Mr. Liyanarachchi. The case was concluded recently. While the Court established that the police officers were guilty of illegal acts, the evidence at the court hearing also indicated that Mr. Liyanarachchi had been detained on the grounds of being involved in a number of politically motivated killings carried out by JVP and that he had not been detained on account of his activities connected with the legal profession.

6. However, regarding allegations levelled against security forces, it should also be taken into account that militants the world over are known to resort to the wearing of army type uniforms for a variety of purposes.

7. While condemning these illegal killings of lawyers, the Government of Sri Lanka wishes to state that it would not be correct to conclude that the reduction in numbers of habeas corpus applications can be attributed to the killing of lawyers.

8. The habeas corpus procedure and the fundamental rights procedure are two alternate rights available to a petitioner under Sri Lankan laws. The number of habeas corpus applications and fundamental rights applications filed during the last three years are as follows:

Habeas Corpus Applications

1988	-	505	
1989	-	483	
1990	-	74	
1991	-	57	(as at 30 June 1991)

Fundamental rights applications

1988	-	77	
1989	-	49	
1990	-	1 485	
1991	-	677	(as at 30 June 1991)

The above figures indicate that while there has been a reduction in habeas corpus applications, there has been an increase in the number of fundamental rights applications which have been filed in the Supreme Court of Sri Lanka.

9. Petitioners appear to have first sought relief by way of habeas corpus applications, but then found the fundamental rights procedure more convenient. The fundamental rights procedure entitles the applicant, if an allegation or allegations are established, to relief, including damages, orders for release etc., or any such directions as may be deemed just and equitable.